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DEC 01 1999

Office of the Director
Group 3600

In re Application of :
Robert R. Reaver : DECISION ON PETITION
Application No. 08/428,918 : TO WITHDRAW THE
Filed: April 25, 1995 : HOLDING OF ABANDONMENT
For: COMBINATION FLY SWATTER :
AND INSECT TRAP :
:

This is in response to applicant's petition filed in the Patent and Trademark Office on August 3, 1998 to Withdraw the Holding of Abandonment under 37 CFR 1.181, or alternatively to Revive the application as unavoidably abandoned under 37 CFR 1.137(a). The delay in this decision is sincerely regretted.

The petition to Withdraw the Holding of Abandonment is **GRANTED**.

A review of the file indicates that applicant was sent a **non-final** rejection mailed June 18, 1997. Applicant was given a Shortened Statutory Period for response of 3 months from that date. A response was filed on October 7, 1997 which included a supplemental declaration and an amendment to the claims. On September 23, 1997 an Advisory Action was sent to the applicant denying entry of the claims. On October 7, 1997 and again on October 20, 1997 the applicant submitted a response which again included supplemental declarations and amendments to the claims. On November 19, 1997 the Office sent another Advisory Action which denied entry of the amendments in the above responses. On July 21, 1998 a Notice of Abandonment was mailed to applicant which stated that the application had become abandoned due to applicant's failure to timely file a proper response to the Office letter of November 19, 1999.

Sept 2, 1998

The applicant alleges that on December 11, 1997 the applicant spoke to the examiner who agreed that the case had never been under final rejection and that the Advisory Actions sent had been done so in error and that applicant should expect to receive another Office Action. There is, however, no record of such an interview present in this case.

Regardless of whether or not applicant's allegations are confirmed by a record of the above interview, it is clear from the review of the file that the Advisory Actions sent on September 23, 1997 and November 19, 1997 were improper treatments by the examiner of the timely responses submitted by the applicant. Because the responses were made prior to a final rejection they are entered as a matter of right and will be so entered in this case. It is noted, however, that the amendments to the claims fail to comply with 37 CFR 1.121(b) and thus the next action by the examiner will need to be one alerting the applicant to the fact that the amendment is improper and setting a one month time period for the applicant to submit a supplemental paper correctly amending the claims.

This application will be forwarded to the Supervisory Instruments Examiner to withdraw the abandonment and enter the response to the non-final Office action before returning the case to the examiner for further action on the merits.

Any questions regarding this petition decision should be referred to Steven N. Meyers at (703) 308-3868.


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